

HB39 REQUIREMENTS

Water Right Ownership Update Automation

(Effective July 1, 2008)

1. FOR SELLERS:

When completing the Realty Transfer Certificate (RTC) disclose whether the property for sale has water rights that transfer with the land in Part 7.

- a. Check the appropriate box
 - i. **Box A.** - The property is served by a municipality, public water supply or other public system and there is no private well on the property. The water rights would be in the name of the municipality or public system. Therefore there are no water rights to transfer.
 - ii. **Box B.** - There are no water rights on record at the DNRC that are transferring with the property. If there is a well on the property but no water right in DNRC records, contact the Water Resource Regional Office who serves the county in which the property is located to determine if a water right is needed.
 - iii. **Box C.** - The water rights on record at the DNRC do transfer with the property. The update of DNRC ownership records of the water rights will be automated through the Dept. of Revenue. The ownership update fee must be paid at closing.
 - iv. **Box D.** - The seller has divided the water rights or exempted (reserved) them from the property sale.
 1. Divided - If the water rights are being divided among subdivided parcels, the seller must complete Form 641 DNRC Ownership Update - Divided Interest and submit it with the ownership update filing fee to DNRC within 5 days of filing the deed. If the deed is in escrow, the Certification of Water Right Ownership Update (page 5 of RTC) must be completed by the seller, buyer and closing agent.
 2. Exempted - If the water rights are exempt from the sale of the property they are not being transferred to the buyer. If the water rights are not being sold with the land, the deed must specifically state so on its face. Form 642 DNRC Ownership Update-Exempt (Reserved) Water Right must be completed and filed with the filing fee to the DNRC within 5 days of the recording of the deed. If the deed is in escrow, the Certification of Water Right Ownership Update (page 5 of RTC) must be completed by the seller, buyer and closing agent.

- b. Sign and date the disclosure section.

2. FOR BUYERS:

If the buyer is receiving water right(s) with the property, they should know which water rights they are receiving. Discuss this with the seller before closing. The best time is before any Buy-Sell Agreement is signed so they know which, if any, water rights they are receiving.

3. FOR REALTORS:

Any written agreement to transfer land with water rights must include the following statement.

- a. "Water Rights Ownership Update Disclosure: By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section [85-2-424](#), MCA, could result in a penalty against the transferee and rejection of the deed for recording."
- b. It is recommended to discuss and determine prior to a sale if water rights are appurtenant to the land for sale. Research of the water rights can be done at this website: www.nris.mt.gov. You can also contact the Water Resource Regional Office who serves the county in which the property is located to determine what water rights are appurtenant to the property or, if you find no water rights but there is a well on the property, what if any form is needed to be filed to obtain a water right.

4. FOR CLOSING AGENTS: (OR OTHERS WHO CLOSE ON PROPERTY SALES)

At closing, when the Realty Transfer Certificate is completed, ensure the seller completes Part 7. Water Right Disclosure.

- a. If **Box C**, is checked, collect the ownership update filing fee and submit it to the DNRC with the following information: the buyer's name and address, the seller's name and address, the geocode, the water right numbers being transferred, and the amount of the fee. Please use the filing fee log sheet at the following website to submit with the fees.
www.dnrc.mt.gov/wrd/water_rts/HB39.pdf
- b. If **Box D**, is checked, the Form 641 or 642 must be completed and submitted with the ownership update fee within 5 days of filing the deed. If the deed is in escrow, the Certification of Water Right Ownership Update (page 5 of the RTC) must be signed by the seller, buyer and closing agent. The Clerk and Recorder cannot accept the deed for filing without the Certification Form being completed and submitted with the deed.

5. FOR CLERK AND RECORDERS:

Review the RTC form being submitted with the deed for recording. If **Box D.** is checked, the Certification of Water Right Ownership Update (page 5 of the RTC) must be completed and submitted with the deed in order for the deed to be recorded. If the Certification is not completed the deed can not be recorded. Refer any questions to our Water Resource Regional Office serving your county. Their contact information is available at:

www.dnrc.mt.gov/field_operations/regionaloffices/Default.asp